

**CITY OF MORGAN HILL
AND
YMCA
COMMUNITY RECREATION CENTER
OPERATING AGREEMENT**

This Agreement ("Agreement") is made this ____ day of _____, 2006 ("Effective Date"), by and between the City of Morgan Hill, a California general law city ("City"), and the YMCA of Santa Clara Valley, a California non-profit corporation ("YMCA") for operations of the Centennial Recreation Center ("CRC") located at _____, Morgan Hill, California.

Recitals

- A. The City owns the newly constructed CRC, a 52,000 square foot community recreation center which includes a fitness room, gymnasium, an indoor swimming pool, a senior wing and a teen wing.
- B. The YMCA is experienced in operating health and fitness facilities and is interested in expanding its programs in the Morgan Hill area.
- C. The City currently operates an Outdoor Aquatics Center, a Community Cultural Center and certain recreational programs.
- D. The parties believe they can maximize the programs offered and better control the expenses of operating the CRC if the City, using City employees, provides aquatics and teen programming while the YMCA, using YMCA employees, provides health and fitness and senior services at the CRC.
- E. The City and YMCA desire to take advantage of the YMCA's experience in offering membership-based health and fitness programming while ensuring that the City remains responsible to the City Council and the residents of Morgan Hill for the CRC's operations including its financial performance.
- F. The parties desire to set forth the terms and conditions of their relationship in this Agreement with further details of the actual CRC operations to be set forth in a Center Operating Plan. The initial Center Operating Plan ("COP") is attached to this Agreement as Exhibit A; however it is intended that specific services provided by each party and the operating relationships may change over the course of this Agreement in order to meet community needs.
- G. The City and YMCA commit themselves to work together in the spirit of partnership for the success of the CRC, subject to the terms and conditions of this Agreement, and to deal with each other with fairness, respect, cooperation, and good faith in the operation of the CRC and performance of this Agreement. The City and YMCA commit to promptly resolve disputes over this Agreement and/or CRC operations.

NOW THEREFORE, the parties agree as follows.

Agreement

1. Parties to the Agreement.

City is the City of Morgan Hill, 17555 Peak Avenue, Morgan Hill, California 95037, with its principal contact for purposes of this Agreement as follows:

City Manager
17555 Peak Avenue
Morgan Hill, CA 95037
Phone: 408-779-7271
Fax: 408-779-1592

YMCA is the YMCA of Santa Clara Valley, 1922 The Alameda, 3rd Floor, San Jose California 95126, with its principal contact for purposes of this Agreement as follows:

President and CEO, YMCA of Santa Clara Valley
1922 The Alameda, 3rd Floor
San Jose, CA 95126
Phone: 408-298-3888
Fax: 408-298-0413

2. Term.

2.1 The term of this Agreement shall commence on the Effective Date and shall terminate on June 30, 2011, unless earlier terminated by either party as provided in Section 2.2 or extended as provided in Section 2.3.

2.2 In addition to the provisions of Section 5.6 and 5.7 below, either party may request an early termination of this Agreement after June 30, 2009. Such a request must be made in writing, and must be made a minimum of six months in advance of proposed termination date, unless City and YMCA mutually agree to a lesser time. Provided that such written request is timely made, termination shall occur upon the specified termination date.

2.3 This Agreement may be extended for two additional five-year terms upon the written mutual agreement of the parties which agreement must be reached no later than December 31, 2010 for the first extension, and December 31, 2015 for the second extension. The parties may mutually agree to additional extensions beyond this date. Prior to each extension, the parties shall prepare an evaluation of the success of CRC operations and present it to the City Council and YMCA. Criteria for this evaluation are provided in the COP.

3. Management and Staffing.

3.1 City and YMCA agree to cooperatively manage and operate the CRC as a first class recreation center for the benefit of the public. A "Recreation Supervisor," or other classification as determined by the City, shall be employed by the City and responsible for all CRC operations. The initial COP is attached to this Agreement as Exhibit A and is incorporated into this Agreement by this reference. The COP, among other things, details staff duties and operating relationships. The parties hereby authorize the Morgan Hill City Manager ("City Manager") and YMCA of Santa Clara Valley CEO ("CEO") to modify in writing the COP from time to time as may be necessary to facilitate efficient operations of the CRC consistent with the intent of this Agreement.

3.2 The Recreation Supervisor shall be employed by the City. The City shall provide the YMCA with opportunities for meaningful and substantial input on the selection and ongoing performance of the Recreation Supervisor. The Recreation Supervisor shall have operational authority for the management and operation of the CRC. The duties and responsibilities of the Recreation Supervisor shall include, but not be limited to:

- (a) Managing the CRC so that it is developed and maintained as a first class recreational center.
- (b) Preparing and administering the annual budget and work plan for development and operation of the CRC.
- (c) Preparing the annual progress report for the preceding fiscal year for approval by the City Council.
- (d) Organizing, scheduling, and directing YMCA and City employees assigned to the CRC.
- (e) Reporting on status of operations at the CRC as requested, including but not limited to, providing a monthly report intended for the City Council and YMCA Board of Directors.
- (f) Performing all duties that are usual and customary and normally associated with the position of a recreation supervisor of a public recreation center.

3.3 Notwithstanding the parties' agreement to cooperatively manage and operate the CRC, City employees working at the CRC are employed solely by the City, and the City retains all responsibilities associated with their employment. YMCA employees working at the CRC are employed solely by the YMCA, and the YMCA retains all responsibilities associated with their employment. The parties agree to cooperate fully with each other in resolving any employment issues. The YMCA agrees to indemnify and hold the City, its agents, officers and employees harmless from any claim or damage resulting from an employment matter involving a CRC YMCA employee acting within the scope of employment. The City agrees to indemnify and hold the YMCA, its agents, officers and employees harmless from any claim or damage resulting from an

employment matter involving a CRC City employee acting within the scope of employment.

- 3.4 Performance issues on the part of the Recreation Supervisor may be raised by either party and addressed through the dispute resolution process provided for in Section 11.1 of this Agreement.
- 3.5 The CRC staff shall be comprised of employees of both the City and the YMCA. It is acknowledged and agreed between the parties that to achieve the optimum performance of the total CRC staff, City employees may be directed to work at the CRC on YMCA activities within the scope of this Agreement and YMCA employees may be directed to work at the CRC on City activities within the scope of this Agreement.
- 3.6 The City Recreation and Community Services Director and the YMCA Vice President of Operations shall meet periodically to evaluate CRC operations and shall prepare no later than December 31 of each year and present as soon as practicable thereafter an annual report on CRC operations to the City Council and the Board of Directors of the YMCA of Santa Clara Valley. The report shall include member satisfaction data as well as data on the financial performance of the CRC. The Director and Vice President may involve other City and YMCA staff in development of the annual report as desired.

4. Grounds and Facilities

- 4.1 The City shall retain title to the grounds, buildings, structures and all other improvements, and its equipment. Subject to approval of the Recreation Supervisor, certain equipment owned by the YMCA may be used at the CRC; provided, however, any such equipment must be identified in a writing attached to the COP and the equipment must be clearly marked as YMCA property on the equipment itself.
- 4.2 The City and YMCA agree that both parties shall continue joint use of the grounds, buildings, equipment and other improvements at the CRC in furtherance of this Agreement. The Recreation Supervisor shall determine the most effective use of the CRC grounds, buildings, equipment and other improvements subject to the approval of the City's Director of Recreation and Community Services, or such other individual designated in writing by the City Manager, in consultation with the Vice President of Operations for the YMCA, or such other individual designated in writing by the YMCA CEO.

5. Budget and Funding

- 5.1 The parties agree that it is the intent of the arrangement governed by this Agreement that revenues generated by CRC programs and activities will be

sufficient to cover operating expenses (including, but not limited to, maintenance and contributions to any capital improvement reserves established in the budget) no later than fiscal year 2008/09. (For purposes of this Agreement, "fiscal year" shall mean the twelve consecutive months beginning July 1 of the year first referenced and ending June 30 of the year last referenced. For example, "fiscal year 2008/09" means the period beginning July 1, 2008 and ending June 30, 2009.)

- a. In February of each year, the Recreation Supervisor and the Executive Director of the Mount Madonna YMCA ("Executive Director") shall develop budget assumptions related to the CRC operating budget for the following fiscal year.
- b. Before March 15, or on another mutually-agreed upon date, the Recreation Supervisor and Executive Director shall develop the preliminary proposed annual CRC operating budget and workplan. The budget will include estimated costs and revenue from health and fitness activities and senior services as well as agreed-upon capital improvement reserves. The YMCA may agree to the preliminary proposed CRC operating budget and workplan or terminate this Agreement subject to the notification provisions of section 5.6.
- c. The proposed annual budget and work plan and the latest progress report will be included in the City Manager's Recommended Budget, which must be submitted to the City Council no later than May 15 each year. Once the City Council has established the annual operating budget, the YMCA may agree to the CRC operating budget or terminate this Agreement subject to the notification provisions of section 5.6.
- d. Once the annual budget and work plan is approved by the City Council, that annual budget and work plan shall be implemented by the Recreation Supervisor for the upcoming fiscal year.

5.2 As part of the initial annual budget, the City shall pay YMCA an agreed-upon amount including direct expenses and overhead for the provision of health and fitness programs at the CRC. All the agreed-upon services shall be provided at the CRC. The foregoing payments shall be made quarterly, in equal installments, and shall be due by July 15, October 15, January 15 and April 15. YMCA shall provide the City with reconciliation of actual quarterly expenses by October 31, January 31, April 30, and July 31 each year. Operating expenses to be paid to the YMCA for health and fitness programs shall be established with the adoption of the annual budget and work plan.

5.3 The City and YMCA may agree to a mid-year budget adjustment to the CRC budget in special circumstances including but not limited to a significant

unexpected expense affecting the CRC operations which could not be reasonably anticipated or controlled.

- 5.4 The City shall provide YMCA with monthly reports on the operating position of the CRC. Both parties agree to maintain agreed-upon customer service standards and accessibility over the course of the year, while recognizing that operations may change over the year in order to meet financial objectives for CRC operations.
- 5.5 As part of the annual budget and work plan adoption process, the parties will agree on a method for separately accounting for fee-based activities (health and fitness, aquatics, facility operations) and non-fee-based activities (senior and teen centers). A budget worksheet for the initial year is attached as Exhibit B. A final annual budget reconciliation shall be prepared no later than October 1 of each year. Any net operating gain for the health and fitness program (calculated by subtracting approved operating expenses, including a reserve for future capital expenditures, from health and fitness program revenue) shall be distributed to the parties as follows: 60% to the City and 40% to the YMCA. Any net operating loss for the health and fitness program (calculated by subtracting approved operating expenses, including a reserve for future capital expenditures, from health and fitness program revenue) shall be paid by parties as follows: 60% from other City funds and 40% by transfer of funds from the YMCA to the City no later than thirty (30) days after receipt of the final budget reconciliation.
- 5.6 In the event that the YMCA does not agree to the annual budget and work plan as approved by the City Council, this Agreement shall terminate. The YMCA will notify the City in writing that this Agreement shall be terminated six months from the date of notification, or on another date as agreed-upon by the parties. Distribution of net operating gain or loss shall be suspended during the six month notice period. Likewise, the YMCA shall not be obligated to pay a proportional amount of revenue shortfalls, as described in section 5.5, during the six month notice period. The parties acknowledge and agree that such a termination will require a substantial amount of time to accommodate ongoing obligations at the CRC and to enable full separation of responsibilities and obligations of the parties. The parties agree to cooperate reasonably one with the other in such an event to facilitate such a separation as expeditiously as possible. Termination of this Agreement as provided in this Section (with each party bearing its own costs) shall be the sole remedy of the parties.
- 5.7 In the event that the YMCA objects to the candidate selected by the City for the position of Recreation Supervisor, either at the initial hire or in future hiring actions, the YMCA may terminate this Agreement by giving the City six months advance written notice. Distribution of net operating gain or loss shall be suspended during the six month notice period. Likewise, the YMCA shall not be obligated to pay a proportional amount of revenue shortfalls, as described in section 5.5, during the six month notice period. The parties acknowledge and

agree that such a termination will require a substantial amount of time to accommodate ongoing obligations at the CRC and to enable full separation of responsibilities and obligations of the parties. The parties agree to cooperate reasonably one with the other in such an event to facilitate such a separation as expeditiously as possible. Termination of this Agreement as provided in this Section (with each party bearing its own costs) shall be the sole remedy of the parties.

6. Programming and Pricing

- 6.1 The City and YMCA will agree upon programming and pricing as part of the annual budget and work plan process. The initial programming and pricing is as described in the COP. The parties will agree on which existing recreational and fitness programming currently offered by the City or the Mt. Madonna YMCA, if any, will be moved to the CRC.
- 6.2 The parties acknowledge that the scope of community services offered at the CRC, including youth, family, intergenerational, special event, and adaptive programming, may evolve over time.
- 6.3 Initial program pricing and the pricing philosophy for the CRC are provided in Section 2 of the COP.
- 6.4 It is intended that the annual City Council approval of the budget and work plan will authorize the Recreation Manager to adjust prices and programming as needed in accordance with a City Council adopted policy or directive.

7. Integration with other Facilities

- 7.1 The parties agree to consult with each other prior to offering new recreational and fitness programs to Morgan Hill residents including but not limited to teens and seniors at other City or YMCA owned or operated venues.

8. Senior Services

- 8.1 The parties agree that the YMCA will provide senior program services as defined in the COP at the CRC. The YMCA currently has a contract with the County of Santa Clara to provide a Senior Nutrition Site in Morgan Hill. It is anticipated that the YMCA will relocate the Senior Nutrition Site to the CRC. In developing the annual budget, as long as the County pays for the direct costs of the Senior Nutrition Site, there will be no charge to the City for these services. At any time that the County ceases paying the YMCA for a Senior Nutrition Site at the CRC, inclusion of

this service and the cost of providing it will be considered as part of the annual budget and work plan.

8.2 As part of the annual budget and work plan, the City will provide an annual stipend to the YMCA to subsidize the operation of the Senior Center core program. In Fiscal Year 06/07, this will be \$37,500. In the first full year of operation, Fiscal Year 07/08, this will increase to \$75,000. Increases in future years will be agreed upon by the parties as part of the annual budget and work plan process.

9. Revenues and Marketing

9.1 The parties agree that Morgan Hill residents are intended to be the primary beneficiaries of the CRC, although the CRC will be available for the use of non-residents as well. To that end, the parties desire to develop a marketing plan and activity program pricing structure that will accomplish the foregoing goal and will provide adequate revenues to cover annual operating expenditures. The parties also intend to jointly and/or individually seek grants or other sources of funding which may be available to provide existing or expanded services and programs at the CRC. Both parties agree to cooperate fully, one with the other, in such endeavors. Implementation of this Section is addressed more fully in the COP.

9.2 Members of the CRC will be able to utilize other YMCA of Santa Clara Valley facilities. Half of the processing fee paid by members who chose this option will be credited to the YMCA of Santa Clara Valley.

9.3 The parties agree that there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, sexual orientation, or ancestry, in any activity or membership offered pursuant to this Agreement.

10. Audits, Record Retention and Inspection

10.1 The parties understand and agree that the City is a public entity and as such is subject to various laws including but not limited to the California Public Records Act, and as such members of the public as well as representatives of governmental agencies have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or other records of each party relating to this Agreement. Such material, including but not limited to all pertinent costs, accounting, and financial records shall be retained by each party for a period of at least five (5) years after their creation date.

10.2 Each party grants the other party, at the requesting party's expense, the right to conduct at any reasonable time an audit and re-audit of the books, records and business conducted related to this Agreement and observe the operation of the

business so that the accuracy of the above records and any of the invoices for services provided can be confirmed.

10.3 In the event of any dispute between the parties as to financial matters, the parties agree as their sole remedy to mutually choose an independent auditor to conduct an investigation of the disputed matter. If the parties are unable to mutually choose an independent auditor, each party shall identify one auditor and those two auditors shall choose a third, independent auditor to conduct the investigation. The auditor so named shall be deemed to have been mutually chosen by the parties. If as a result of the investigation of the mutually chosen auditor, any adjustment in payment is required by either party, such payment shall be made within sixty (60) days of receipt of written demand for same.

10.4 If either party triggers the process set forth in section 10.3 (the "Triggering Event"), that action shall give either party the opportunity to terminate this Agreement by providing the other party six months advance written notice of such desire to terminate. Such option to terminate must be exercised within ninety (90) days of the Triggering Event. The action to terminate this Agreement described in this section is not intended nor shall it adversely affect the process set forth in section 10.3.

11. Dispute Resolution

11.1 **Operational Issues.** Except as otherwise specifically set forth in this Agreement, any dispute concerning day to day operational decisions in the implementation of this Agreement as further detailed in the COP shall be resolved by the Recreation and Community Services Director and the Vice President of Operations of the YMCA. For any disputes which cannot be resolved by these individuals, either party may request that the Morgan Hill City Manager resolve the dispute after first consulting with the YMCA CEO. The decision of the City Manager shall be final.

11.2 **Other Issues** . Should other disputes arise between the parties for which a dispute resolution mechanism or remedy is not otherwise specifically set forth in this Agreement (such as for example in section 10.3), and the parties are unable to resolve such matters between themselves by negotiation after the complaining party has provided the other party written notice of the complaint and a reasonable opportunity to cure the problem, then such disputes shall be resolved in the courts of the County of Santa Clara in accordance with applicable law and procedure, including any claims procedures that may be required by law with respect to a general law city.

11.3 **Termination Option.** If either party seeks judicial redress of a dispute as set forth in section 11.2 (the "Triggering Event"), that action shall give either party the opportunity to terminate this Agreement by providing the other party six months advance written notice of such desire to terminate. Such option to terminate must be exercised within ninety (90) days of the Triggering Event. The action to terminate this Agreement described in this section is not intended nor shall it adversely affect the process set forth in section 11.2.

12 Indemnification

12.1 The City agrees to indemnify, defend and hold harmless YMCA, its agents, officer and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death personal injury, or property damage arising from or connected with City's operations or its services under this Agreement, including any Worker's Compensation suits, liability or expense, arising from or connected with services performed by or on behalf of the City by any person pursuant to this Agreement. City's duty to indemnify YMCA shall survive the expiration or other termination of this Agreement.

12.2 YMCA agrees to indemnify, defend and hold harmless City, its agents, officer and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death personal injury, or property damage arising from or connected with YMCA's operations or its services under this Agreement, including any Worker's Compensation suits, liability or expense, arising from or connected with services performed by or on behalf of the YMCA by any person pursuant to this

Agreement. YMCA's duty to indemnify City shall survive the expiration or other termination of this Agreement.

13. Insurance

13.1 General Requirements. Without limiting YMCA's indemnification of City or limiting City's indemnification of YMCA, YMCA and City shall each provide and maintain at its own expense throughout the term of this Agreement the hereinafter listed programs of insurance covering its operations hereunder. Such insurance provided by YMCA and by City shall be provided by insurers satisfactory to City's Risk Manager and satisfactory to the YMCA's Risk Manager, respectively, and a certificate or other evidence of coverage and certified copies of additional insured endorsements satisfactory to City and YMCA, respectively, shall be delivered to the City's Risk Manager and to the YMCA's Risk Manager, respectively, before the effective date of this agreement. It is recognized that City currently provides general liability, workers' compensation, and auto liability insurance coverage through a combination of self insurance, pooled coverage, and purchased excess insurance coverage. Such evidence of coverage shall specifically identify this Agreement and shall contain the express condition that City or YMCA, as applicable, is to be given at least thirty (30) days advance written notice of any modification or termination of any program of insurance. All such insurance provided by YMCA shall be primary to and not contributing with any other insurance maintained by City. With the exception of Workers' Compensation insurance, all such insurance provided by YMCA and by City shall name "City of Morgan Hill, its elected officials, officers, employees, agents and representatives" and "YMCA of Santa Clara Valley, its officers, employees, agents, and representatives," respectively, as additional insureds.

At all times during the term of this Agreement, YMCA and City shall provide and maintain the following forms and amounts of insurance:

- 13.1.1 Liability. Comprehensive General Liability Insurance written on a commercial general liability form or on a comprehensive general liability form covering the hazards of premises-operations, products/completed operations, independent contractors, advertising, contractual, broad form of property damage, and personal injury with a combined single limit of not less than Two Million dollars (\$2,000,000) per occurrence and an aggregate limit of not less than Four Million Dollars (\$4,000,000).
- 13.1.2 Workers' Compensation. Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability.
- 13.1.3 Comprehensive Automobile Liability. Endorsed for all owned, non-owned, and hired vehicles with a combined single limit of not less than Two Million Dollars (\$2,000,000) per accident.

13.1.4 Failure to Comply. Failure on the part of YMCA or City to procure or maintain required insurance shall constitute a material breach of contract upon which City or YMCA, respectively, may immediately terminate this Agreement. Notwithstanding this requirement, in the event that YMCA or City fails to procure or keep in effect at all times the insurance coverage required herein, City or YMCA, respectively, may in its discretion procure said insurance on behalf of YMCA or City, respectively, and charge YMCA or City, respectively, the full cost of the insurance and administrative costs to the City. YMCA will pay such costs upon invoice by City.

13.2 The parties agree and will ensure that all CRC staff are trained in all safety related matters as required by law or appropriate for the services provided at the CRC. This includes tuberculosis, drug screen and criminal history checks as part of pre-employment screening, and blood borne pathogens and child abuse prevention training after hire.

14. Notices

Any notice, consent, authorization or other communication to be given shall be in writing and deemed duly given and received when (a) delivered personally, (b) transmitted by facsimile, (c) one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or (d) three business days after being mailed by first class mail, charges and postage prepaid, and in all cases properly addressed to the party to receive such notice at the last address furnished for such purpose by the party to whom notice is directed.

In the case of notices to be given to the City, notice shall be addressed as follows:

City Manager
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
Fax: 408-779-1592
Phone: 408-779-7271

With a copy to:

City Clerk
City of Morgan Hill
17555 Peak Avenue
Morgan Hill, CA 95037
Fax: 408-779-1592
Phone: 408-779-7271

In the case of notices to be given to the YMCA, notice shall be addressed as follows:

President and CEO
YMCA of Santa Clara Valley
1922 The Alameda, Third Floor
San Jose, CA 95126
Fax: 408-298-0413
Phone: 408-298-3888

Either party may change its address or other contact information by giving notice in writing to the other party as specified in this section.

15. Amendments

This Agreement shall only be amended by a writing signed by both parties after approval by the City Council and YMCA Board of Directors.

16. Appropriations.

The payment of any obligations of the City described in this Agreement is subject to the annual appropriation of funds for said payments by the City Council. This provision does not affect any obligation of the City for payment of funds attributable to a fiscal year for which an annual budget has been approved.

17. Miscellaneous Provisions

17.1 Good Faith and Cooperation. The City and YMCA agree that it is in their mutual best interest and in the best interest of the public that the CRC be operated and managed as herein agreed and, to that end, the parties shall in all instances cooperate and act in good faith in compliance with all of the terms, covenants, and conditions of this Agreement and shall deal fairly with each other.

17.2 Severability. If any provision of this Agreement, or the application of such provision to any party or circumstance, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to such party or circumstance other than those to which it is held to be invalid or unenforceable, shall not be affected thereby.

17.3 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of California, without regard to that state's conflict of laws principles.

17.4 Entire Agreement. This Agreement contains the entire agreement of the parties and supersedes all prior to contemporaneous written or oral negotiations, correspondence, understandings and agreements between the parties regarding the subject matter hereof.

17.5 Parties in Interest. Nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any party other than the YMCA and the City nor shall anything in this Agreement relieve or discharge the obligation or liability of any third party to any party to this Agreement nor shall any provision give any third party any right of subrogation or action over or against any party to this Agreement.

17.6 Waiver. Failure of either party to complain of any action, non-action or default of the other party shall not constitute a waiver of such party's rights hereunder with respect of such action, non-action or default. Waiver by the YMCA or City of any right or any default hereunder shall not constitute a waiver of any subsequent default of the same obligation or for any other default, past, present or future. No payment by a party, or acceptance by the other party, of a lesser amount than shall be due from one party to the other shall be treated otherwise than as a payment on account. The acceptance by a party of a check for a lesser amount, with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and a party may accept such check without prejudice to any rights or remedies which it may have against the other party.

17.7 Construction. This Agreement has been negotiated by the parties and their respective legal counsel and will be fairly interpreted in accordance with its terms and without strict construction in favor of or against any party.

17.8 No Assignment. This Agreement, nor any part of it nor any right or obligation arising from it shall be assigned without the express written consent of the parties.

17.9 Independent Contractor Status. The parties shall at all times be acting as independent contractors. This Agreement is not intended, and shall not be construed to create the relationship of agent, servant, employee, partner, joint venture or association as between the parties. The parties understand and agree that any of their personnel furnishing services to the CRC under this Agreement are employees solely of the party which hired such personnel for purposes of Workers' Compensation liability and for purposes of receiving all other types of employee benefits. The parties shall bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any personnel hired by them for injuries arising from or connected with services performed under this Agreement, and shall bear the sole responsibility and liability for furnishing all other employee benefits to any personnel hired by them.

IN WITNESS WHEREOF, the YMCA and the City have executed this Agreement as of the day and year first above written.

YMCA

CRC Operating Agmt -execution

By: _____
Name: _____
Title; _____

CITY OF MORGAN HILL

Approved as to form:

Janet C. Kern
City Attorney

By: _____
Name: _____
Title: _____

EXHIBIT A

CENTENNIAL RECREATION CENTER OPERATING PLAN May 2006

1. Community Recreation Center Management

- a. The City of Morgan Hill and the YMCA of Santa Clara Valley through the Mt. Madonna Branch will work together in the spirit of partnership to provide health and fitness and senior services to members and participants of the new Centennial Recreation Center. The YMCA will offer an agreed-upon range of programming and will involve the City in hiring, supervising and evaluating all staff that deliver these programs.

- b. Personnel

It is recognized that all staff who work at the CRC are members of multiple work teams and are members of one CRC staff team. When staff are working they will be expected to work together as one, high performing team focusing on customer service, safety, communication, and cooperation.

All CRC staff will attend appropriate staff meetings as determined by the CRC Supervisor and Associate Supervisor. YMCA staff will be expected to attend selected YMCA trainings and staff meetings of the branch or Association. City staff will be expected to attend selected City trainings and meetings. When appropriate, CRC staff will have access to selected YMCA and City trainings.

To ensure a team environment, CRC staff will have many items in common:

- Identical staff uniforms with the partnership logo on the uniform and the organizational logo on staff name tags.
- Joint staff meetings.
- Identical payroll periods.
- Identical safety and risk management policies.
- Expectation to work as a team and support all other departments of the CRC.
- Responsibility to identify problems and provide solutions for the entire center.

The CRC Supervisor will be hired by the City and will be responsible for providing leadership for all CRC team members in an effort to deliver a large volume of high quality programs. The team will be comprised of three major departments:

- City staff hired by the CRC Supervisor.
- City staff hired by the Aquatics Supervisor.
- YMCA staff hired by the YMCA.

Success of the CRC Supervisor will be measured by:

- Creating one high performing CRC staff team from City CRC, YMCA CRC, and Aquatics Department CRC staff
- Membership income/ number of members enrolled
- Member satisfaction survey results
- Number of seniors served in the Senior Center
- Number of teens served in the Teen Center
- Reaching or exceeding budgeted net for entire center
- Overall facility cleanliness and functioning
- Safety & Risk Management
- Satisfaction of City residents with easy movement between CRC, YMCA, and Aquatics Center Programs

The CRC will have a Municipal Services Assistant who will provide support to supervisors, coordinators, and program directors.

The Associate CRC Supervisor for Health and Fitness will be hired by the YMCA and will supervise the Welcome Center Program Director, the Health and Fitness Program Director, and will be responsible for membership sales and all land based staff and fitness programming. Water based fitness classes will be supervised by the Aquatics Supervisor.

The Welcome Center Program Director is responsible for marketing the membership of the facility. This position will supervise the sales and service staff who work the Welcome Center. They will assure that people can join the facility at any time the facility is open, and will be responsible for all enrollment for any program at the facility. In addition it is hoped that the Welcome Center can also take enrollment for programs at other city facilities and the YMCA.

c. Reporting relationships

	CRC City Staff	CRC Supervisor	CRC YMCA Staff
Position	Recreation Coordinator (Teens), Recreation Coordinator (Aquatics), Municipal Services Assistant, Maintenance Specialist	CRC Supervisor	Associate CRC Supervisor for Health and Fitness, Wellness Center Director, Senior Program Director
Job Descriptions	City	City with YMCA input	YMCA with City input
Recruiting	City	City with YMCA input	YMCA with City input

	CRC City Staff	CRC Supervisor	CRC YMCA Staff
Screening	City	City	YMCA of Santa Clara Valley
Decide finalists	City	City with YMCA input	YMCA with City input
Interviews	Regular process, possible YMCA involvement	Regular process with a visit to a YMCA and a near final interview with City and YMCA staff together	Regular process with City involvement
Decision	City	City decision with YMCA input	YMCA decision with City input
Reports to	CRC Supervisor	Recreation and Community Services Director	Mt Madonna YMCA Branch Executive
Employee Progressive Discipline	City with possible YMCA input	City with possible YMCA input	YMCA with possible City input
Performance Evaluation	CRC Supervisor with input from YMCA	Recreation and Community Services Director with input from YMCA	YMCA with input from CRC supervisor

- d. Staff liaison: The Mt. Madonna YMCA will provide a liaison to the CRC to:
- i. Meet weekly with CRC Supervisor to coordinate YMCA programming and services with the CRC
 - ii. Work with CRC Supervisor and Welcome Center Director on Marketing and enrollment strategies
 - iii. Provide supervision to Associate CRC Supervisor for Health and Fitness and Seniors Program Director to assure program quality and maximum enrollment
 - iv. Interface with the Santa Clara County Department of Aging
 - v. Resolve any YMCA staff performance problems
- e. Capital expenditures
Beginning in FY 07/08, the parties will develop a plan for future facility replacements. The replacement schedule will be developed during the budget process and funded as an annual operating expense for the CRC. The City will include the YMCA in the planning process, but will retain final decision-making authority on the facility replacement plan.

- f. Facility maintenance
The CRC Supervisor will be responsible for managing facility maintenance in cooperation with the Building Division of the Community Development Department. The YMCA will be responsible for fitness equipment upkeep and maintenance. At all times, the CRC and its equipment will be maintained in a safe, clean, and operational manner. All CRC staff will be responsible to assist in keeping the facility clean as part of their daily duties. City staff and/or contractual crews will perform detailed, daily cleaning. A daily, monthly, quarterly, and annual cleaning plan will be developed to ensure the long-term integrity of the CRC.
- g. Cash Handling/Accounting/Payables/Receivables/Collections
The CRC Supervisor will be responsible to ensure all cash handling, accounting, payables, receivables, and collections policies are adhered to by CRC staff. The City and YMCA will cooperatively determine which party can most effectively and efficiently perform these duties as part of the partnership. Detailed policies and procedures will be developed for all financial aspects of the CRC operations.
- h. Membership policies
The City and YMCA will cooperatively develop membership policies that are intended to ensure community access, maximize revenue and comply with legal mandates. Existing YMCA policies may be modified to meet the CRC's operational needs. Both parties understand and agree that there shall be no discrimination based upon race, color, creed, religion, gender, marital status, age, disability, national origin, sexual orientation or ancestry.
- i. Membership software
The City and YMCA will cooperatively determine which software package best meets the CRC's membership sales, tracking, and management needs. All appropriate CRC team members will be thoroughly trained to ensure that accurate and timely processing of information is achieved.
- j. Operating hours: Estimated Days and Hours of Operation
The CRC will be open seven days per week except on major holidays; Easter, Memorial Day, July Fourth, Labor Day, Thanksgiving, and Christmas. The facility will be open according to the following daily schedule:

Monday through Friday	5am to 10pm
Saturday	6:30am to 8pm
Sunday	8am to 6pm

The City and YMCA may determine that it is in the best interest of the partnership and CRC members to adjust the operating schedule.
- k. Customer surveys and complaint resolution
Customer surveys will be available at the Welcome Center at all times. The CRC Supervisor and Welcome Center Director will be responsible to track comments,

provide recommendations for service improvements, and to ensure all complaints are handled in a professional and timely manner.

- I. Fundraising and scholarships: The YMCA will raise funds as part of its Community Support Campaign to help support the senior nutrition program and to offer additional programs for teens involved in the CRC (Youth & Government, teen leadership or camp scholarships).

2. Programming and pricing

a. Pricing Policy

- Member fees will be set to provide access to the health and fitness facility and maximize revenue
- The resident rate will apply to those who work or live in Morgan Hill.
- The standard rate will apply to those who do not live or work in Morgan Hill.
- Since membership is the income stream that will provide the best chance of cost recovery, pricing will be done to encourage membership
- Seniors and teens have specialized centers in the facility, and will not need to join in order to take advantage of the programs in these centers. If they wish to use the fitness facilities, they will need to join the CRC or purchase a day pass.

b. Pricing changes

The City Manager will be empowered by the City Council to adjust fees pursuant to Council policy.

- As expenses increase, prices will be adjusted to meet full cost recovery goals
- It is best to increase fees on an annual basis a small amount rather than have a larger amount after a longer time period of no fee increase
- Fee increases would be determined annually by taking into account 3 major items:
 - Salary increases
 - Energy Costs
 - CPI
- If it is determined that the current pricing structure relating to the daily fee is undermining the cost recovery goal, the City Council will make a decision to revise the fee or the goal

c. Main Membership Categories

- Adult: Includes one adult and all children under the age of 18 living at the same address. Access all hours, all core programs, and Fitlinxx
- Family: Two adults and all children under the age of 18 living at the same address. Access all hours, all core programs and Fitlinxx

- Special Hours: One adult, designed for seniors and those with flexible schedules. 10:00 am to 4 pm weekdays, and any time on the weekends, access all core programs and Fitlinxx during these hours
- Adult Plus: Addition of extra adult over the age of 18 living at the same address, access all hours, all core programs and Fitlinxx
- Day Pass: Access for one person to open gym, open swim, fitness room
- YMCA membership: Those members who want access to other YMCA facilities or programs, will be offered the opportunity to select this when they join or at any time in the future. The City will pay the YMCA 50% of the processing fee for each membership that selects this option.

Categories may be adjusted, deleted or new categories added by agreement of both parties.

d. Program Pricing Structure

Type	Member/ resident	Member/standard	Non/member /Resident	Non/member /standard
Membership processing fee	\$50 for Adult \$75 for Family	\$50 for Adult \$75 for Family		
Membership	Fee	Fee +	n/a	n/a
YMCA membership	Free	Free	Fee	Fee
Core class	Free	Free	Fee	Fee + \$10
Specialty Class	Member fee	Member Fee + \$10	Non-member fee	Non-member fee + \$10
Swim lessons	Member fee	Member fee + \$10	Non-member fee	Non-member fee + \$10
Fitlinxx	Free	Free	n/a	n/a
Day Pass adult	Free	Free	\$7	\$9

- Core Fitness classes and Fitlinxx are free for members. Examples:
 - Aerobics
 - Water Fitness
 - Group cycling class
 - 12 week personal fitness program
- Day pass participants can use the gym, the fitness center, and lap or recreational swim. Day pass participants are not eligible to take part in a fitness class except as a one time guest

- Non members who want to take a class would buy a class card good for one month from the date of the first use. These punch cards will have up to 8 punches. This will give them access to the class, but not to other areas of the facility.
- Some Specialty Classes will have an additional cost for everyone. Examples:
 - Strength Training
 - Personal Training
 - Swim lessons

3. Governance

- By June 30, 2007, CITY and YMCA will evaluate the feasibility of establishing a CRC advisory committee. Such a committee could be comprised of teen center, senior center, and health and fitness users as well as Mt. Madonna YMCA board members or advisors as determined appropriate by the CITY and YMCA. If such an advisory committee were determined to be feasible, CITY and YMCA would establish a mission for the committee and plan for supporting its activities.

4. Partnership Evaluation

As described in Section 2.3 of the Operating Agreement, the parties will conduct an evaluation of the success of the partnership prior to extending the term of Agreement. This evaluation will be presented to the City of Morgan Hill City Council and the YMCA of Santa Clara Valley Metropolitan Board of Directors and Mt. Madonna YMCA board of Directors, as appropriate.

The parties will work together on the development of this evaluation, agreeing to the criteria to be used in the evaluation. The criteria may include:

- Extent to which a high performing CRC staff team has been developed from City CRC, YMCA CRC, and Aquatics Division CRC staff
- Membership income/ number of members enrolled
- Member satisfaction survey results
- Number of seniors served in the Senior Center
- Number of teens served in the Teen Center
- Reaching or exceeding budgeted net for entire center
- Overall facility cleanliness and functioning
- Safety & Risk Management
- Satisfaction of City residents with easy movement between CRC, YMCA, and Aquatics Center Programs

5. Advertising and marketing of facility and programming

- The partnership of the City and YMCA will be prominently displayed on the facility, staff uniforms, and written materials. Both the City and YMCA agree that any differentiation of the two parties for branding purposes is not intended to

separate the staff during the operation of the facility, but to take advantage of the brand name of the YMCA and City for marketing purposes. The parties will create a logo to identify and celebrate the partnership.

- b. The CRC Supervisor is responsible for developing a marketing plan in coordination with the YMCA
- c. The parties intend to advertise CRC programming in both City and YMCA publications/resources
- d. Staff nametags may identify special departments of the facility.
- e. Printed materials will say "Centennial Recreational Center, operated in Partnership with the YMCA."
- f. City is willing to have YMCA staff provide information regarding other YMCA programming that would be available to CRC members as part of their membership.
- g. The partnership will be identified with signage inside the building. Printed materials with the YMCA logo and other identifying information may be used at the facility.

6. Senior Services Provided at the CRC

The YMCA will provide senior services, programs and activities at the CRC, in conjunction with other senior service organizations, according to the following guidelines:

- a. Senior services will be offered a minimum of six hours each weekday throughout the year.
- b. The YMCA will collaborate with and coordinate the activities of senior service providers, such as the Community Action Group, AARP, and the Friends of the Morgan Hill Senior Center to ensure a range of service, support and enrichment opportunities to seniors at the CRC. Typical programs may include, but will not be limited to: nutrition, health insurance counseling, legal assistance, health screenings, income tax preparation assistance, educational presentations, recreational activities, arts and crafts classes, counseling services, and opportunities for volunteer service. The parties acknowledge and agree that the CRC is a public facility and as such there are certain legal restrictions upon facility use.
- c. The YMCA will operate a daily nutrition program, serving an average of 75 meals per weekday to 350 unduplicated seniors annually.

- d. The YMCA will offer opportunities for other social service agencies to provide health maintenance, education, and advocacy programs in a location convenient to seniors.
- e. The YMCA will provide activities and services each month that focus on developing and strengthening individual seniors in spirit, mind and body.
- f. The YMCA will provide a minimum of one special event per month to maintain interest and enthusiasm.

7. It is understood between the parties that this COP may be amended from time to time by the mutual agreement of the parties to reflect operating experience.

Centennial Recreation Center Operating Budget Framework

EXHIBIT B

Centennial Recreation Center					
	City Aquatics	City CRC Administration, Operations, and Programs	Seniors	YMCA Health/Fitness	CRC Total
EXPENSE	XXX,XXX	XXX,XXX	XX,XXX	XXX,XXX	X,XXX,XXX
REVENUE	YYY,YYY	YY,YYY	-	YYY,YYY	Y,YYY,YYY
TRANSFER IN					XX,XXX
OPERATING GAIN/ (LOSS)					
COST RECOVERY	%	%	%	%	%

Seniors:
Senior expense historically budgeted in Recreation Administration budget.

CRC Annual Budget:
Partnership goal to achieve 100% cost recovery by FY 08/09 based on 2006 City and YMCA Market Study.

Aquatics:
Second largest revenue source.

100% City responsibility.

CRC Administration and Operations:
Non-fee based activity expenses (City staff, utilities, supplies, Teen Center, etc.) will be paid from here.

100% City responsibility.

Partnership Reconciliation:
This column will be the agreed upon partnership portion of the budget.

Operating gains or losses will be determined annually from this number.

On an annual basis, membership revenues should significantly exceed expenses to assist in full cost recovery for the CRC.